IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

First Appeal No. 382 OF 1995
with C.A.No. 1975 of 1989

The State of Maharashtra ...Appellants

Versus

Pandurang J Patil & others ...Respondents

With

First Appeal No 383 of 1995
with C.A.No. 1973 of 1989
With
First Appeal No 384 of 1995
With
First Appeal No 385 of 1995
With
First Appeal No 386 of 1995
with C.A.No. 1974 of 1989
With
First Appeal No 387 of 1995
with C.A. No. 3531 of 1989
With
First Appeal No 388 of 1995
With
First Appeal No 389 of 1995
with C.A.No. 1967 of 1989
With
First Appeal No 390 of 1995

Mr. K.K. Tated AGP for the appellants.

Mr Rajesh Datar for respondents/claimants.

CORAM: SWATANTER KUMAR, C.J., &
DR.D.Y.CHANDRACHUD, J.

Judgment reserved on 3rd Sept. 2007
Judgment delivered on 7th Sept, 2007

JUDGMENT (PER SWATANER KUMAR, C.J.):

By this judgment we will dispose of the above mentioned nine first appeals, all of which arise from the judgment of the Reference Court dated 29th October 1997 passed in Land Reference No.28 of 1984 and other companion References. The necessary facts are that notification under section 4 of the Land Acquisition Act, 1972 (hereinafter referred to as the Act) was issued by the Government on 3rd February 1970 intending to acquire land 53 gunthas equivalent to 5362 square meters situated in the revenue estate of village Koparkhairane, Taluka and District Thane, Maharashtra, in furtherance to which notification under section 6 of the Act was issued on 11th October 1972. The land in terms of the notification was acquired for the purpose of Planned Development and Utilisation of Trans Harbour Panvel and Trans Thana Creek area for industrial, commercial and residential purpose. The land was obviously acquired for public purpose.

The Government took possession of the land admeasuring 53 gunthas equivalent to 5362 square meters. Having given opportunity to the parties to lead evidence in support of their claims, the Special Land Acquisition Officer passed his award dated 31st January 1984 wherein he awarded compensation varying from Rs.2.70 per sq mts. to Rs.3.60 per sq mts, depending upon the nature of the land acquired. The claimants being dissatisfied with the compensation awarded to them for acquisition of their lands, preferred separate References under section 18 of the Act. In their References they claimed enhancement of compensation at Rs.10.00 per sq meter. The Reference Court, as already noticed, vide its judgment date 29th October 1987, granted compensation at the rate of Rs.10 per sq mt. equivalent to Rs.53,620/-

2. The compensation awarded by the Reference Court even at the rate of Rs.10/- per sq. mt was not acceptable to the State. The Reference Court mainly relied on the sale- deed dated 18th November, 1967 at Exhibit 11 in respect of sale of land admeasuring 1 acre and 3 gunthas of same village. This sale-deed reflected the sale consideration at the rate of Rs.9.35 ps per sq. mt. Relying on this sale-deed the Reference Court granted Rs.10/- per sq. mt as compensation payable to

the claimants.

3. The sale-deed at Exhibit 11 is admittedly a sale instance from the same village and is prior to the date of section 4 notification. Exhibit 11 sale-deed was executed on 18th November, 1967, while the notification under section 4 of the Land Acquisition Act, 1894, was issued on 3rd February, 1970. In fact, the claimants could have been granted even higher compensation as the intervening period between the sale-deed at Exhibit 11 proved and relied by the claimants was much prior in time and was a comparable sale instance. The enhancement of meager sum of Rs.0.65 ps per sq. mt for the intervening period can, in no way, be said to be excessive or unreasonable. The Courts have to apply some kind of guess work while computing the compensation payable to th claimants for acquisition of their respective lands. A Division Bench of this Court, in *The State of Maharashtra v. Sat Dev Prakash*, (First Appeal No.219 of 1989 decided on 21st June, 2007, has held that :

> "14. Some element of guesswork has to be applied by the court particularly when direct evidence is not available on record. Of course such application of guess work for

determining the compensation payable to the claimants essentially has to be within a very narrow compass."

4. Exhibit 12 is a copy of the judgment dated 15th December, 1983, passed in Land Acquisition Reference No.26 of 1982 wherein the Reference Court had determined compensation at the rate of Rs.10/- per sq. mt to the claimants.

5. Furthermore, in the judgment dated 11th September, 1987, in Land Acquisition Reference No.24 of 1982 at Exhibit 13 the Reference Court had again granted similar amount of compensation. This order is consistent with earlier judgments of the Reference Court and they all are based upon proper appreciation of admissible evidence. The State did not lead any cogent evidence before the Reference Court so as to differentiate the compensation either on the ground of comparability or admissibility of the sale instances as well as the judgments of other Reference Courts during the trial of present land acquisition reference. The State now cannot take advantage of its own errors and claim that the evidence has not been correctly appreciated by the Reference Court.

6. Another argument advanced on behalf of the State that on account of acquisition of large area of land there should have been deduction from the compensation determined on the basis of sale instances of small pieces of lands firstly would have no application to the facts and the circumstances of the present case. Even if for the sake of arguments, it is to be accepted that there should be some element of deduction then, in that event also the Court would have said that the sum, if not wholly but substantially, is covered against the increase in prices for the intervening period. The claimants had entered into the witness box as their own witnesses and stated that the Sarpanch of the village had received one letter from the CIDCO which was marked as Exhibit 19. The said letter indicated that the CIDCO had framed rehabilitation scheme for the project affected areas and the authorities were already carrying on the leveling of the land. In the proceedings before the Land Acquisition Officer, the claimants had claimed compensation at the rate of Rs.100/- per sq. yard for acquisition of their lands. Thus, on this count also the above contention is devoid of substance.

7. It is settled principle of law and statutory obligation is placed on the Reference Court to determine adequate and fair market value of the acquired land in terms of Section 23 of the Land Acquisition Act, 1894. The Court cannot also lose sight of the fact that these are compulsive acquisitions of lands and not voluntary sale of lands effected by the owners in favour of the State. Certain amount of latitude is to be given without imbalancing the settled principles of law. We are unable to accept the contention of the State that the compensation awarded by the Reference Court is excessive, unreasonable or based on no evidence. We find no merit in the appeals. The appeals are dismissed. The parties shall bear their own costs.

8. In view of the dismissal of the First Appeals, the Civil Applications stand disposed of.

CHIEF JUSTICE

Dr. D.Y.CHANDRACHUD, J.